

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BEN W FULLER

Claimant,

and

L A LEASING INC

Employer.

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HEARING NUMBER: 13B-UI-10186

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

DECISION

The Employer appealed the issue of the chargeability of the overpayment in this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision on the chargeability of the overpayment. The Employment Appeal Board **REVERSES** on the overpayment chargeability issue as set forth below.

FINDINGS OF FACT:

The claimant filed for unemployment insurance benefits with an effective date of August 11, 2013. He received \$372.00 in benefits after the separation from employment. On August 23, 2013, the employer told the fact finder that as of March 7, 2011, it would “no longer be participating in fact finding’s via telephone”. The employer provided documents at the fact-finding interview on August 30, 2013. Those documents included the protest which set out the name and phone number of the person who could be contacted by the fact finder, indicated that the Claimant quit for health reasons, and gave the date of the quit. In addition, the Employer provided a “Separation Request Form-Iowa” that had the name of the person to contact, gave the date of the quit, and indicated that the Claimant quit for health issues. The fax cover that came with this form gave the name and phone number of that same contact person and said “please call me with any questions or concerns.” The fact finder had that person’s name and phone number written down.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter we make clear that the Administrative Law Judge disqualified the Claimant in her decision, and that that disqualification decision was not appealed by the Claimant. Our decision today has no effect on the disqualification issue since we have no jurisdiction over it.

What was appealed to the Board was the Administrative Law Judge's determination to charge the Employer for the overpayment based on the Administrative Law Judge's decision that the Employer failed to participate in fact finding. The regulations, cited by the Administrative Law Judge, set out the standard for determining participation:

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. ...If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including...in the event of a voluntary separation, the stated reason for the quit...

871 IAC 24.10(1). If the Employer met this standard of participation then the Claimant has to pay back the overpayment of \$372. Otherwise the Employer's account is chargeable for this amount and the Claimant is relieved of having to pay it back.

As the quoted regulation makes clear in a quit case the Employer must "[a]t a minimum...identify the dates and particular circumstances, including...the stated reason for the quit." 871 IAC 24.10(1). What the Employer submitted was sufficient to meet this standard. Perhaps in a termination case, where the Employer has the burden, this would not have been sufficient. But in this quit case the Employer gave the date of the quit and the stated reason for the quit. Since the Employer gave the name and number of an employee to contact with questions this was sufficient to meet the requirement of giving the contact information for an employee "who may be contacted, if necessary, for rebuttal." 871 IAC 24.10(1). The Employer has satisfied the requirement of participation set out by regulation. The Employer is relieved of charges for the overpayment. The Claimant will be charged the overpayment of \$372.00.

DECISION:

The administrative law judge's decision dated October 3, 2013 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The overpayment entered in the amount of \$372 is chargeable to the Claimant and not to the Employer's account.

John A. Peno

Cloyd (Robby) Robinson

